

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AMY BOWMAN,

Plaintiff:

V.

NANCY A. BERRYHILL,¹

Defendant.

CASE NO. C16-1059JLR

**ORDER REVERSING AND
REMANDING FOR FURTHER
ADMINISTRATIVE
PROCEEDINGS**

I. INTRODUCTION

Plaintiff Amy Bowman seeks review of the denial of her application for disability insurance benefits. Ms. Bowman contends that the Administrative Law Judge (“ALJ”) erred in evaluating the medical evidence, evaluating Ms. Bowman’s testimony, assessing her residual functional capacity (“RFC”), and finding her capable of performing work available in the national economy. (Op. Br. (Dkt. # 9) at 1-2.) Having considered the submissions of the parties, the relevant portions of the record, and the applicable law, the court REVERSES Defendant Commissioner Nancy A. Berryhill’s (“the Commissioner”)

¹ Nancy A. Berryhill is now the Acting Commissioner of the Social Security Administration. Pursuant to Federal Rule of Civil Procedure 25(d), Nancy A. Berryhill is substituted for Carolyn W. Colvin as Defendant in this suit. The clerk is directed to update the docket, and all future filings by the parties should reflect this change.

1 final decision and REMANDS the matter for further administrative proceedings under
2 sentence four of 42 U.S.C. § 405(g).

3 **II. BACKGROUND**

4 On July 31, 2013, Ms. Bowman protectively filed an application for disability
5 insurance benefits. (Administrative Record (“AR”) (Dkt. # 7) at 15.) Ms. Bowman’s
6 application was denied initially and on reconsideration. (*Id.*) The ALJ conducted a
7 hearing on January 13, 2015, at which Ms. Bowman alleged an amended disability onset
8 date of May 1, 2013. (*Id.*) After the hearing, the ALJ issued a decision finding Ms.
9 Bowman not disabled. (*Id.* at 15-24.)

10 The ALJ utilized the five-step disability evaluation process in his decision,² and
11 the court summarizes the ALJ’s findings as follows:

12 **Step one:** Ms. Bowman has not engaged in substantial gainful activity since May
13 1, 2013, the amended alleged onset date.

14 **Step two:** Ms. Bowman has the following severe impairments: Chiari I
15 malformation, cervical degenerative disc disease, chronic fatigue syndrome,
16 obesity, history of fibromyalgia, history of sleep disorder, history of asthma, and
nicotine addiction.

17 **Step three:** Ms. Bowman does not have an impairment or combination of
18 impairments that meets or equals the requirements of a listed impairment.³

19 **RFC:** Ms. Bowman can perform sedentary work as defined in 20 C.F.R.
20 § 404.1567(a). She can perform unskilled, repetitive, and routine work. She can
have occasional contact with the public, coworkers, and supervisors. She will be
off task up to 14 percent of the time but will still meet minimum production
requirements of the job. She will be absent from work one time every three

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² 20 C.F.R. § 416.920.

23 ³ 20 C.F.R. Part 404, Subpart P, Appendix 1.

1 months. She can occasionally stoop, squat, crouch, crawl, and kneel. She can
2 occasionally climb ramps and stairs. She can never climb ladders, ropes, or
3 scaffolds.

4 **Step four:** Ms. Bowman is unable to perform any past relevant work.
5

6 **Step five:** Because jobs exist in significant numbers in the national economy that
7 Ms. Bowman can perform, she is not disabled.
8

9 (See AR at 17-24.) The Appeals Council denied Ms. Bowman's request for review,
10 making the ALJ's decision the Commissioner's final decision. (See AR at 1-6.)⁴
11

12 III. ANALYSIS

13 Pursuant to 42 U.S.C. § 405(g), this court must set aside the Commissioner's
14 denial of social security benefits if the ALJ's findings are based on legal error or not
15 supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d
16 1211, 1214 n.1 (9th Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir.
17 1999)).
18

19 A. Evaluation of the Medical Evidence

20 Ms. Bowman argues that the ALJ erred in evaluating the medical evidence in the
21 record. (See Op. Br. at 3-15.) Where the medical evidence in the record is not
22 conclusive, resolving questions of credibility and conflicts in the evidence is solely the
23 responsibility of the ALJ. See *Sample v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982).
In resolving questions of credibility and conflicts in the evidence, an ALJ's findings
“must be supported by specific, cogent reasons.” See *Reddick v. Chater*, 157 F.3d 715,

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1 .725 (9th Cir. 1998). The ALJ can satisfy this requirement “by setting out a detailed and
2 thorough summary of the facts and conflicting clinical evidence, stating his interpretation
3 thereof, and making findings.” *Id.* The ALJ may also draw inferences “logically flowing
4 from the evidence.” *Sample*, 694 F.2d at 642. Further, the court itself may draw
5 “specific and legitimate inferences from the ALJ’s opinion.” *Magallanes v. Bowen*, 881
6 F.2d 747, 755 (9th Cir. 1989).

7 The ALJ must provide “clear and convincing” reasons for rejecting the
8 uncontradicted opinion of either a treating or examining physician. *Lester v. Chater*, 81
9 F.3d 821, 830 (9th Cir. 1996). Even when a treating or examining physician’s opinion is
10 contradicted, that opinion “can only be rejected for specific and legitimate reasons that
11 are supported by substantial evidence in the record.” *Id.* at 830-31.

13 **1. Pamela Yung, M.D., and Philip Moberg, M.D.**

14 Ms. Bowman argues that the ALJ erred by failing to give specific and legitimate
15 reasons supported by substantial evidence to discount the opinions of treating physicians
16 Pamela Yung, M.D., and Philip Moberg, M.D. (*See Op. Br.* at 3-12.) The court agrees.

17 In 2014, Ms. Bowman’s treating physicians completed medical opinion
18 questionnaires. (*See AR* at 614-15, 617-18.) Dr. Yung and Dr. Moberg both opined that
19 Ms. Bowman would need unscheduled breaks of 15 minutes or more on a daily or
20 near-daily basis and would miss work three or more days per month due to her
21 impairments. (*See AR* at 615, 618.) The ALJ gave little weight to their opinions because
22 //

1 they were “inconsistent with [Ms. Bowman’s] longitudinal treatment history and her
2 performance on physical examinations.” (See AR at 22.)

3 The ALJ’s broad statement is not sufficiently specific to show why he interpreted
4 any supposedly conflicting evidence in favor of other opinions rather than those of the
5 treating physicians. An ALJ may not reject a treating physician’s opinion by stating that
6 the opinion lacks support in the medical record without explaining why his conclusions,
7 “rather than the doctors’, are correct.” *See Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th
8 Cir. 1988).

9 Regardless, substantial evidence does not support the ALJ’s finding that Dr.
10 Yung’s and Dr. Moberg’s opinions were inconsistent with Ms. Bowman’s treatment
11 history or physical examinations. The ALJ cited only a March 2014 examination in
12 which a physician found that Ms. Bowman had normal gait and muscle tone. (See AR at
13 22 (citing AR at 599-600).) However, the ALJ fails to explain how findings of normal
14 gait and muscle tone were inconsistent with the treating physicians’ opinions. Dr. Yung
15 and Dr. Moberg both regularly reported that Ms. Bowman had normal gait in their
16 treatment notes. (See, e.g., AR at 337, 586, 589, 628, 655.) They also reported MRI
17 results indicating Chiari I malformation, limited range of motion, diffuse tenderness to
18 palpation through all peripheral muscles and joints, and exam results consistent with
19 fibromyalgia. (See AR at 444, 456, 586, 589.) Considering the entire treatment record,
20 including Ms. Bowman’s normal gait, Dr. Yung and Dr. Moberg opined that Ms.
21 Bowman’s impairments would prevent her from working without unscheduled breaks and
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1 significant absenteeism. (See AR at 615, 618.) The ALJ showed no inconsistency
2 between the record and their opinions.

3 Moreover, an ALJ should generally give treatment providers' opinions more
4 weight than the opinions of sources who do not treat a claimant because "these sources
5 are likely to be the medical professionals most able to provide a detailed, longitudinal
6 picture of [a claimant's] medical impairment(s) and may bring a unique perspective to the
7 medical evidence that cannot be obtained from the objective medical findings alone or
8 from reports of individual examinations, such as consultative examinations or brief
9 hospitalizations." See 20 C.F.R. § 404.1527(d)(2). Particularly considering that the ALJ
10 rejected the opinions of Ms. Bowman's treating physicians in favor of opinions of
11 non-examining state agency medical consultants (see AR at 22), the ALJ erred by failing
12 to provide sufficient reasons for doing so.

14 The Ninth Circuit has "recognized that harmless error principles apply in the
15 Social Security Act context." *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)
16 (citing *Stout v. Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050, 1054 (9th Cir. 2006)). "[I]n
17 each case we look at the record as a whole to determine [if] the error alters the outcome
18 of the case." *Id.* Therefore, "an ALJ's error is harmless where it is 'inconsequential to
19 the ultimate nondisability determination.'" *Id.* (quoting *Carmickle v. Comm'r, Soc. Sec.*
20 *Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008)). Here, because the ALJ improperly
21 discounted Dr. Yung's and Dr. Moberg's opinions in assessing the RFC and found Ms.
22 //

1 Bowman capable of performing work based on that RFC, the errors affected the ultimate
2 disability determination and are not harmless.

3 **2. Christopher Nelson, Ph.D.**

4 Ms. Bowman next argues that the ALJ erred by failing to give a specific and
5 legitimate reason supported by substantial evidence to discount the opinion of examining
6 psychologist Christopher Nelson, Ph.D. (*See Op. Br. at 13-16.*) The court agrees.

7 In November 2013, Dr. Nelson examined Ms. Bowman and opined that she would
8 have moderate difficulty understanding, remembering, persisting at tasks, performing
9 activities within a schedule, maintaining regular attendance, being punctual, learning new
10 tasks, adapting to change, and making work-related decisions. (*See AR at 526.*) The
11 ALJ gave this opinion only some weight because the record did not show that limitations
12 in persisting at tasks or performing under stress were “the result of mental impairments
13 given [Ms. Bowman’s] lack of specific mental health treatment.” (*See AR at 22.*)

15 However, according to the Ninth Circuit, that a claimant “may be one of millions
16 of people who did not seek treatment for a mental disorder until late in the day is not a
17 substantial basis on which to conclude that [a physician’s] assessment of [that] claimant’s
18 condition is inaccurate.” *Nguyen v. Chater*, 100 F.3d 1462, 1465 (9th Cir. 1996). When
19 a mental illness is involved, an assumption that a failure to seek treatment suggests a lack
20 of need for treatment may be illogical. It may be illogical in part because a person
21 suffering from a mental illness may not realize that her “condition reflects a potentially
22 serious mental illness.” *See id.* “[I]t is a questionable practice to chastise one with a
23

1 mental impairment for the exercise of poor judgment in seeking rehabilitation.”” *Id.*
 2 (quoting *Blankenship v. Bowen*, 874 F.2d 1116, 1124 (6th Cir. 1989)).

3 Furthermore, Ms. Bowman’s primary care provider Dr. Yung diagnosed her with
 4 major depressive disorder, listed it as an active condition throughout her treatment notes,
 5 and prescribed Ms. Bowman medication for depression and anxiety. (*See, e.g.*, AR at
 6 365-68, 528-31, 563-65, 633.) Therefore, the ALJ’s reason for discounting Dr. Nelson’s
 7 opinion is also unsupported by substantial evidence. Because the ALJ improperly
 8 discounted Dr. Nelson’s opinion in assessing the RFC, the ALJ committed harmful error
 9 here as well.⁵

10 **B. Evaluation of Ms. Bowman’s Testimony**

11 Ms. Bowman argues that the ALJ erred in evaluating her subjective complaints.
 12 (*See Op. Br. at 15-18.*) The court agrees.

13 Questions of credibility are solely the responsibility of the ALJ. *See Sample*, 694
 14 F.2d at 642. The court may not second-guess these credibility determinations. *Allen v.*
 15 *Heckler*, 749 F.2d 577, 580 (9th Cir. 1984). To reject a claimant’s subjective complaints,
 16 the ALJ must provide “specific, cogent reasons for the disbelief.” *Lester*, 81 F.3d at 834
 17 (citation omitted). The ALJ “must identify what testimony is not credible and what
 18 evidence undermines the claimant’s complaints.” *Id.*; *see also Dodrill v. Shalala*, 12 F.3d
 19 915, 918 (9th Cir. 1993). Unless affirmative evidence shows the claimant is malingering,
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21 ⁵ Ms. Bowman argues that the ALJ’s error in evaluating Dr. Nelson’s opinion also led to
 22 an erroneous finding at step two that Ms. Bowman had no severe mental impairments. (*See Op.*
 23 *Br. at 12-15.*) While any error at step two was harmless here because the ALJ found other severe
 impairments and proceeded with the sequential evaluation process, the ALJ must make new
 step-two findings on remand.

1 the ALJ's reasons for rejecting the claimant's testimony must be "clear and convincing."
2 *Lester*, 81 F.2d at 834.

3 Here, the ALJ discounted Ms. Bowman's testimony for several reasons, none of
4 which are clear, convincing, and supported by substantial evidence. First, the ALJ found
5 it "reasonable to presume that if [Ms. Bowman's] stress improved so [too] would her
6 impairments." (*See* AR at 21.) At the hearing, the ALJ asked Ms. Bowman if her illness
7 is exacerbated by stress, to which Ms. Bowman replied that her illness "gets worse" if she
8 stresses. (*See* AR at 37.) From this testimony, the ALJ inferred that Ms. Bowman's
9 testimony regarding the limiting effects of her impairments could be discounted because
10 they would improve if she were under less stress. (*See* AR at 21.) However, in stating
11 that stress worsened her condition, Ms. Bowman was not necessarily testifying that stress
12 was the determining factor. In fact, Ms. Bowman went on to describe at the hearing how
13 even with accommodations to lower her stress at work, she was unable to stay employed.
14 (*See* AR at 38.) Substantial evidence does not support the ALJ's attenuated inference.

16 Next, the ALJ noted that Ms. Bowman's chronic conditions "did not prevent work
17 in the past." (*See* AR at 20.) To the contrary, the record shows that, under a doctor's
18 recommendation, Ms. Bowman's last employer accommodated her need to work no more
19 than 25 hours per week but that Ms. Bowman was unable to maintain that schedule due to
20 her impairments. (*See* AR at 272-73.)

21 The ALJ also noted that Ms. Bowman's activities, such as driving and watching
22 TV, were inconsistent with her alleged vision difficulties. (*See* AR at 22.) However, Ms.
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1 Bowman stated in one function report that she was unable to see well. (*See* AR at 208.)
2 Ms. Bowman ultimately did not seek to establish disability due to a vision impairment;
3 she alleged at the hearing that her chronic pain, fatigue, and depression affected her
4 ability to work. (*See, generally*, AR at 32-62.) Therefore, any inconsistency between the
5 function report and Ms. Bowman's activities does not constitute a clear and convincing
6 reason to discount her testimony regarding her allegedly disabling symptoms.
7

8 Finally, the ALJ discounted Ms. Bowman's testimony because "the medical
9 evidence [did] not substantiate [her] allegations of disabling limitations." (*See* AR at 20,
10 22.) However, an ALJ may not reject a claimant's testimony solely on the basis of a lack
11 of objective medical evidence in the record. *See Orteza v. Shalala*, 50 F.3d 748, 749-50
12 (9th Cir. 1995); *Byrnes v. Shalala*, 60 F.3d 639, 641-42 (9th Cir. 1995). Because none of
13 the other reasons that the ALJ provided for discounting Ms. Bowman's testimony was
14 clear, convincing, and supported by substantial evidence, the ALJ's analysis of Ms.
15 Bowman's testimony may not be upheld on this reason alone. Therefore, the ALJ erred
16 here as well.

17 **C. The RFC Assessment and Step-Five Finding**

18 Ms. Bowman argues that the RFC and step-five finding are not supported by
19 substantial evidence due to the errors alleged above. (*See* Op. Br. at 18.) The court
20 concludes that because the ALJ erred in evaluating the medical evidence and Ms.
21 Bowman's testimony, the RFC and the resulting step-five finding were not supported by
22 substantial evidence and were in error.
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1 **D. Remand for Further Proceedings**

2 The court may remand this case “either for additional evidence and findings or to
3 award benefits.” *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996). Generally, when
4 the court reverses an ALJ’s decision, “the proper course, except in rare circumstances, is
5 to remand to the agency for additional investigation or explanation.” *Benecke v.*
6 *Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004) (citations omitted). Thus, it is “the unusual
7 case in which it is clear from the record that the claimant is unable to perform gainful
8 employment in the national economy” that “remand for an immediate award of benefits is
9 appropriate.” *Id.*

10 Benefits may be awarded where “the record has been fully developed” and
11 “further administrative proceedings would serve no useful purpose.” *Smolen*, 80 F.3d at
12 1292; *Holohan v. Massanari*, 246 F.3d 1195, 1210 (9th Cir. 2001). Specifically, benefits
13 should be awarded where:

14 (1) the ALJ has failed to provide legally sufficient reasons for rejecting [the
15 claimant’s] evidence, (2) there are no outstanding issues that must be
16 resolved before a determination of disability can be made, and (3) it is clear
17 from the record that the ALJ would be required to find the claimant
disabled were such evidence credited.

18 *Smolen*, 80 F.3d at 1292; *McCartey v. Massanari*, 298 F.3d 1072, 1076-77 (9th Cir.
19 2002). Here, factual issues remain regarding Ms. Bowman’s functional capabilities and
20 her ability to perform other jobs existing in significant numbers in the national economy,
21 in light of any additional limitations. Accordingly, the court concludes that remand for
22 further consideration is warranted.

1 **IV. CONCLUSION**

2 For the foregoing reasons, the court REVERSES the Commissioner's final
3 decision and REMANDS this case for further administrative proceedings under sentence
4 four of 42 U.S.C. § 405(g).

5 DATED this 7th day of February, 2017.

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7 JAMES L. ROBART
8 United States District Judge
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